

REMARKS

Claims 1-2, 9-10, 16-17 and 19-21 are pending and under consideration.

The rejection based on Lim is respectfully traversed. Independent claim 1 (used as an example) recites determining that the tracking actuator deviates from the dynamic range when the signal controlling the feed motor is greater than the predetermined reference value for a predetermined time. In contrast, Lim does not determine the amount of time. Specifically, this reference discloses checking whether a deviation remains within a threshold range. This checking occurs at intervals of T. Lim, col. 3, ln. 18-52. Thus, as long as the deviation is outside the range at the time of checking, an error is determined. Under this method, the deviation could have existed for a very short period of time, but an error would be determined as long as the error occurs at the checking time.

Similarly, Kitayama does not check time, but instead determines a DC offset by calculating a difference between maximum and minimum values. Kitayama, col. 14, ln. 29-41.

Regarding KR '557, claim 1 (again used as an example) recites returning the objective lens connected to the tracking actuator to a neutral point directly in response to the determining that the tracking actuator deviates from the dynamic range. The Examiner admits that the reference does not teach this feature, but instead states that this feature has been known in the art. However, this reference teaches turning the servo off, thus it would not be possible to return the objective lens to the neutral point. Accordingly, the Examiner's modification would not have been obvious to one of ordinary skill in the art.

Furthermore, it appears that the Examiner is relying upon Official Notice. Applicants respectfully traverse the Examiner's statement because supporting evidence related to the returning of the objective lens of the claimed invention has not been provided, and request that the Examiner produce authority for the statement.

The Applicants specifically point out the following errors in the Examiner's action.

First, the Examiner uses common knowledge ("well-known") evidence for the rejection. As explained in the M.P.E.P.,

any facts so noticed should... server only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground for rejection. It is never appropriate to rely solely on

common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based.

M.P.E.P. § 2144.03

Second, the noticed fact is not considered to be common knowledge or well-known in the art. In this case, the limitation is not of notorious character or capable of instant and unquestionable demonstration as being well-known. Instead, this limitation is unique to the present invention (see, M.P.E.P. § 2144.03(A) (the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute").

Third, there is no evidence supporting the Examiner's assertion (see, M.P.E.P. § 2144.03(B) ("there must be some form of evidence in the record to support an assertion of common knowledge").

Fourth, the Examiner appears to be basing the rejections, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such assertion with an affidavit when called for by the Applicant. The Examiner is called upon to support such assertion.

Accordingly, withdrawal of the rejections is requested.

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

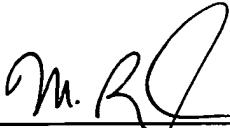
Serial No. 10/670,191

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 2-21-08

By: 
Michael J. Baragliacca
Registration No. 39,099

1201 New York Avenue, NW, 7th Floor
Washington, D.C. 20005
Telephone: (202) 434-1500
Facsimile: (202) 434-1501